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No. 04-37

Supreme Court, U.S.
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In The Supreme Court of the United States

MICHAEL CLINGMAN, GLO HENLEY, KENNETH MONROE, THOMAS PRINCE AND THE OKLAHOMA STATE ELECTION BOARD,

Petitioners,

v.

ANDREA L. BEAVER, FLOYD TURNER, MINELLE L. BATSON, MARY V. BURNETT, MICHAEL L. SEYMOUR, TERRY L. BEAVER, ROBERT T. MURPHY, SHARON LYNN ATHERTON, ROGER BLOXHAM, STEVE GALPIN, RICHARD P. PRAWDZIENSKI, MICHAEL CLEM, WHITNEY L. BONTIN, JR., CHRISTOPHER S. POWELL, CHARLES A. BURRIS AND THE LIBERTARIAN PARTY OF OKLAHOMA A/K/A LIBERTARIAN POLITICAL ORGANIZATION,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

BRIEF OF PETITIONERS ON THE MERITS

W.A. DREW EDMONDSON
Attorney General

WELLON B. POE*
Assistant Attorney General
State of Oklahoma
4545 N. Lincoln Blvd., Suite 260
Oklahoma City, OK 73105
(405) 521-4274

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**Attorney of Record*

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED FOR REVIEW

I. Whether Oklahoma's semi-closed primary election law – which allows a political party to invite non-affiliated voters but not voters registered with another political party to vote in its partisan primary but prevents a voter registered with another political party from voting in that primary – violates the First Amendment rights of a political party and its members to associate.

II. Whether the decision in *California Democratic Party v. Jones*, 530 U.S. 567 (2000) requires that a State allow a political party, at its option, to open its political party primary election to any registered voter regardless of that registered voter's political affiliation.

III. Whether the Tenth Circuit Court of Appeals erred in finding that the State of Oklahoma's restrictions constituted a severe burden on the right of association of the political party thereby requiring the regulation to be narrowly tailored to meet a compelling state interest or whether the appropriate standard is the balancing test which has been applied in election cases before this Court.

PARTIES TO THE PROCEEDINGS

The parties to this proceeding on Petition for Writ of Certiorari are:

Petitioners herein:

Michael Clingman, Secretary of the Oklahoma State Election Board
Glo Henley, Chairman of the Oklahoma State Election Board
Kenneth Monroe, Vice Chairman of the Oklahoma State Election Board
Thomas E. Prince, Member of the Oklahoma State Election Board
and Oklahoma State Election Board

Defendants in the District Court and Appellees in the United States Court of Appeals for the Tenth Circuit

Respondents herein:

Andrea L. Beaver, Floyd Turner, Minelle L. Batson, Mary V. Burnett, Michael L. Seymour, Terry L. Beaver, Robert T. Murphy, Sharon Lynn Atherton, Roger Bloxham, Steve Galpin, Richard P. Prawdzienski, Michael A. Clem, Whitley L. Bontin, Jr., Christopher S. Powell, Charles A. Burris and the Libertarian Party of Oklahoma a/k/a Libertarian Political Organization

Plaintiffs in the District Court and Appellants in the United States Court of Appeals for the Tenth Circuit

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BRIEF OF PETITIONERS

Michael Clingman, Glo Henley, Kenneth Monroe, Thomas Prince and the Oklahoma State Election Board submit this Brief on the Merits on behalf of Petitioners.

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Tenth Circuit is reported as *Beaver v. Clingman*, 363 F.2d 1048, 120 A.L.R. 5th 707 (10th Cir. 2004). (*See* Pet. App. 1-23[1].)

The opinion of the United States District Court for the Western District of Oklahoma, Case No. CIV-00-1071-F, is unreported. (*See* Pet. App. 24-73.)

STATEMENT OF JURISDICTION

The Judgment of United States Court of Appeals for the Tenth Circuit was entered on April 6, 2004. The Petition for Certiorari was filed on July 2, 2004. The Petition for Certiorari was granted on September 28, 2004.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

[1] "Pet. App." refers to the Appendix to the Petition for Certiorari. "J.A." refers to the parties' Joint Appendix. "R.T." refers to the reporter's transcript. "App." refers to the Appendix to the Brief of Petitioners. "Pl. Ex." refers to trial exhibits of Respondents/Plaintiffs. "Def. Ex." refers to trial exhibits of Petitioners/Defendants.

STATUTORY AND CONSTITUTIONAL PROVISIONS

The text of the First Amendment to the Constitution of the United States, the Fourteenth Amendment to the Constitution of the United States and 42 U.S.C. § 1983 are reproduced at Pet. App. 2-3. The key provisions of the Oklahoma Election statutes, 26 O.S.A. § 1-104 is reproduced at App. 2-3.

The key provision of 26 O.S.A. § 1-104 states in pertinent part:

> A. No registered voter shall be permitted to vote in any Primary Election or Runoff Primary Election of any political party except the political party of which his registration form shows him to be a member, except as otherwise provided by this section.
>
> B.1. A recognized political party may permit registered voters designated as Independents pursuant to the provisions of § 4-112 of this title to vote in a Primary Election or Runoff Primary Election of the party.

Title 26 § 4-119 of the Oklahoma Statutes is set forth at App. 9.

The relevant portion of 26 O.S.A. § 4-119 states:

> Any registered voter may make application under oath to change political affiliation by executing a form prescribed by the Secretary of the State Election Board at any time . . . [E]xcept during the period from June 1 through August 31, inclusive, in any even-numbered year.

STATEMENTS

A. Factual Background

Prior to 1987, the Oklahoma primary election system was a closed primary system in which only voters registered as a member of a political party could vote in that political party's primary and primary runoff elections. Following the decision in *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208 (1986), the Oklahoma legislature amended its primary election statutes to comply with that ruling and established a semi-closed primary system in which a political party could decide to allow unaffiliated voters, designated in Oklahoma as "independent" voters, to participate in that political party's primary. 26 O.S.A. § 1-104 (App. 2.) Oklahoma law remains that no voter registered as a member of one political party could vote in another political party's primary or runoff elections.

The decision to allow independent voters is a decision made by the particular party and must be made known to the Oklahoma State Election Board during the month of November in the year prior to the election year, or in the odd numbered years prior to the primary election. Although the change in the statutes was enacted in 1987, no political party chose to open its primary elections to independents until 1996 at which time the Libertarian Party of Oklahoma decided to allow independents to vote in its primary. Only the Libertarian Party, in 1996 and 2000, has permitted independents to vote in its primaries. There was no Libertarian Party primary in 2004.

Oklahoma primary elections are held on the last Tuesday in July of each even-numbered year. 26 O.S.A. § 102 (App. 1.) All necessary runoff elections are held on the fourth Tuesday of August in that same year. 26 O.S.A.

§ 103 (App. 1.) A voter may change his political affiliation up until June 1 immediately preceding the primary elections. He may not change his political affiliation between June 1 and August 31, after the primary runoff election.[2] 26 O.S.A. § 4-119 (App. 9.)

In order to retain status as a recognized political party with the ability to run candidates under the party designation and conduct primary elections, a political party must garner at least ten percent (10%) of the votes cast for the highest office being contested. 26 O.S.A. § 1-109 (App 4-5.) Oklahoma's election for the Office of Governor is conducted during the even-numbered years between the Presidential election years.

Because it failed to garner sufficient voter support in the 1992 Presidential election, the Libertarian Party successfully petitioned in 1996 for recognized political party status. By obtaining recognized political party status, the Libertarian Party Organization was able to run candidates under its banner and conduct primary elections. As of primary election day 1996, there were no more

[2] As of 2004, the Oklahoma primary elections are currently held on the last Tuesday of July of each even-numbered year. 26 O.S. Supp. 2003 § 1-102. The runoff primary elections are held on the fourth Tuesday of August. 26 O.S. Supp. 2003 § 1-103. The final date to change voter affiliation prior to the primary and runoff elections is June 1 of that same year. 26 O.S. Supp. 2003 § 4-119. At the time this action was filed, the Oklahoma primary elections were held on the fourth Tuesday of August of each even-numbered year with the runoff primary elections being conducted on the third Tuesday of September. 26 O.S.A. 1991 §§ 1-102, 1-103. At that time, the last date to change voter affiliation prior to the primary and runoff primary elections was July 1 of that same year. 26 O.S.A. 1991 § 4-119. While the deadline to change party affiliation and the date of the primary elections have changed, the deadline date has remained the same relative to the primary election.

than one hundred forty-one (141) Libertarian Party members registered and eligible to vote in the Libertarian Party primary. Two thousand nine hundred and forty (2,940) votes were cast in the Libertarian party primary, indicating that at least 2,799 more independents than Libertarian Party Organization party registrants voted in the primary. (Pet. App. 31, J.A. 90.) No Libertarian Party runoff election was conducted although runoff elections were conducted in the other political parties.

The Libertarian Party Organization's presidential candidate did not garner sufficient voter support in the 1996 presidential election and the Libertarian Party Organization lost its status as a recognized political party. The Libertarian Party Organization did not attempt to gain recognized political party status for the 1998 election cycle.

In 2000, the Libertarian Party Organization again successfully petitioned for recognized political party status and had one contested election during the primary elections. Although there were only three hundred sixty (360) voters registered as Libertarian Party members and eligible to vote in the Libertarian primary election, two thousand forty-nine (2,049) votes were cast in that primary indicating that at least one thousand six hundred nine (1,609) more independent voters voted than eligible registered Libertarian Party members. (Pet. App. 32, J.A. 91.) No Libertarian Party runoff election occurred in 2000 although runoff elections were conducted in the other political parties.

Prior to that 2000 election, the Libertarian Party requested the Oklahoma State Election Board to not only allow independents but to also allow registered Democrats

and Republicans to vote in the Libertarian Party primary election. After the Oklahoma State Election Board denied that request, the Libertarian Party and several individual voters filed suit alleging the Oklahoma restrictions were unconstitutional.

B. Proceedings Below

Respondents filed the complaint seeking to enjoin the State of Oklahoma from enforcing its primary election statutes prohibiting the participation of voters affiliated with other political parties from voting in the Libertarian Party primary and seeking a declaration that the Oklahoma election scheme was an unconstitutional infringement on Respondents' First Amendment rights to political association. The district court conducted a hearing on Respondents' request for preliminary injunction prior to the 2000 primary elections. The district court denied Respondents' request.

The district court then conducted a two-day non-jury trial in December, 2002. The district court awarded judgment to the Petitioners. (Pet. App. 24-73.) The district court found that the burden imposed by the State of Oklahoma's primary election scheme was not severe and that the election laws imposed only reasonable, non-discriminatory restrictions triggering a less exacting review. Under that lesser standard, the court determined that the State's regulatory interests sufficiently outweighed any burdens caused by the restrictions and found that the restrictions were constitutionally valid.

The Tenth Circuit Court of Appeals reversed the decision of the District Court. 363 F.3d 1048, 1061. (Pet. App. 1-23.) The Court of Appeals concluded that the

burden imposed was severe and that the statutory scheme could survive only if it was tailored to meet a compelling state interest. The Court of Appeals concluded that the interests asserted by Petitioners were not compelling state interests and reversed the district court's finding that the statutory scheme was unconstitutional.

SUMMARY OF ARGUMENT

In each two year election cycle, Oklahoma elects one hundred one (101) State House of Representatives members, twenty-four (24) State senators and five (5) United States congressmen. Depending on the year, presidential or statewide offices as well as a United States Senate race may be on the ballot.

The political primaries related to those elections are conducted in July of each even-numbered year with any necessary runoff elections being conducted in August. Oklahoma has determined that a semi-closed primary system, one in which a political party may invite independents to vote in its primary elections, is the election system which best meets the State's interests. However, in spite of the State's regulatory authority and interests, the decision of the Court of Appeals subjects State election laws to the whims of a political party, notwithstanding legitimate state interests to the contrary. The Court of Appeals incorrectly determined that the State of Oklahoma must allow a political party, if that party so chooses, to open its primary election to any registered voter, including any voter registered as a member of a different political party. This is in direct conflict with the teachings of

Timmons v. Twin Cities Area New Party, 520 U.S. 351 (1997).

The ruling also has effectively, and incorrectly, eliminated a State's right to require party registration prior to a primary election. Although the State provided legitimate interests its regulations are intended to support, the Court of Appeals rejected all interests put forth by the State and eliminated the affiliation requirement. This violates the express directives of *Rosario v. Rockefeller*, 410 U.S. 752 (1973).

The decision of the Court of Appeals establishes that a state may not, to any extent, mandate the manner in which the party chooses its candidates within the framework of a state-sponsored and regulated election. The Court of Appeals, which based its decision on *California Democratic Party v. Jones*, 530 U.S. 567 (2000), creates a situation where a state cannot exert any control over a political party unless that political party acquiesces. It will cause all primary elections to be open – but only if the party so chooses. This ruling will allow a political party to change its primary election scheme from election to election based solely on the desires and whims of the party's controlling officers and the perceived political expediency of that time. The opinion of the Court of Appeals improperly extends *Jones* to require the state to allow a political party to choose which type of primary it wishes to hold, without concern for the consequences to the voting public or state entity.

Finally, the Court of Appeals incorrectly applied a strict scrutiny standard of review against the State's interests which preordained the unconstitutionality of Oklahoma's and many other States' election laws. The

Court of Appeals imposed virtually insurmountable burdens on the Petitioners when it demanded proof of a compelling State interest. Even after requiring a compelling State interest, the Court of Appeals ignored the interests provided by the Petitioners – interests which this Court has previously determined are sufficient State interests to withstand a challenge to its election laws.

The issue in this case is not whether open or closed primaries better promote the goals of effective, responsible and democratic government. The issue is whether the State of Oklahoma and other States that have determined that a semi-closed primary is the preferred primary election system have sufficient interests and should continue to have the authority to regulate primary elections or whether election regulations are appropriate only if such regulations are met with the approval of the political parties.

ARGUMENT

I.

A SEMI-CLOSED POLITICAL PRIMARY DOES NOT EXCEED A STATE'S REGULATORY AUTHORITY OR VIOLATE A POLITICAL PARTY'S OR INDIVIDUAL VOTER'S RIGHT TO POLITICAL ASSOCIATION.

Under Oklahoma law, a candidate for partisan public office may gain access to the general election ballot through two methods. The candidate may file as an independent, or in the most common manner, may receive the nomination of a recognized political party by winning that party's primary election. Oklahoma conducts a semi-closed primary election system whereby a political party may invite unaffiliated or independent voters to vote in its

primary elections, but persons registered as members of a political party may not vote in another party's primary elections. The Court of Appeals improperly determined that the restrictions imposed by a semi-closed primary system amounted to an abuse of Oklahoma's regulatory power and an unconstitutional infringement on the associational rights of voters and the political parties.

A. A State Has Broad Authority In Regulating Elections And Protecting The Integrity Of The Election Process.

Primary elections are purely statutory creatures whose purpose is to determine nominees from a political party who will run for office in a general election. As such, states have important interests in regulating the primary elections including, but not limited to the interests of protecting the integrity of its political process from frivolous or fraudulent candidates. *See Democratic Party of U.S. v. Wisconsin, ex rel. Lafolette*, 450 U.S. 107 (1981). Within the frame of its regulatory power, a state is free to conduct the primary elections and limit its participation in those elections as the state sees fit, so long as the state's regulatory action does not violate any provisions of the United States Constitution. *See Smith v. Allwright*, 321 U.S. 649 (1944).

A political party has appropriately and succinctly been identified as a "voluntary association, instituted for political purposes, with the goal of effectuating the will of its members. The party's ultimate goal, in the electoral process, is to obtain control of the leverage of government by winning elections, so that it may then put into operations and philosophies." *Nader v. Schaffer*, 417 F.Supp. 837, 844 (D. Conn. 1976) *summarily aff'd*, 429 U.S. 989

(1976) (citation omitted). In order to accomplish those goals, the political party will seek to nominate candidates who are most likely to win a general election while remaining faithful to the policies and philosophies of the party and its members.

It has long been recognized that the selection of nominees by political parties plays a crucial role in the electoral system. Indeed the nomination of candidates by the political parties has often been called the "most critical stage" of the electoral process. Without doubt, the political party's selection of its candidates is an ultimate and crucial element of the party members' activities. *Id.*

The goal of the political party is to effectuate the will of its members on the public as a whole. *Ray v. Blair*, 343 U.S. 214, 222 (1952). In order to accomplish these goals, it is important for the political party to nominate candidates who are and will remain faithful to the ideas of that political party.

However, while it is well settled that political parties enjoy freedom of association under the First Amendment, it is just as well recognized that a State has a legitimate interest in protecting those associational rights, not only of the party and its members but also other parties and their members, from intrusion by voters with adverse political principles. *Id.* at 221-222 (1952).

A state has a substantial and legitimate interest in protecting the manner in which elections are conducted and in protecting the overall integrity of the historic electoral process. It has been recognized that this interest includes preserving the political parties as viable and identifiable interest groups and insuring that the results of primary elections accurately reflect the voting of the

political party's members. Indeed, parties should be able to avoid primary election outcomes which would tend to confuse or mislead the general voting population to the extent the general electorate relies on party labels as representative of certain ideologies. "There must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Storer v. Brown*, 415 U.S. 724, 730 (1974).

A state has comprehensive election authority which extends to primaries and voter registration and qualifications. *Id.* In fact, "in facilitating the effective operation of a Democratic government, a state might reasonably classify voters or candidates according to political affiliations . . . " *Nader v. Shaffer*, 417 F.Supp. at 845-46, quoting *Ray v. Blair*, 343 U.S. 214, 226 n. 14 (1952). It is within the province of the state to choose the primary election scheme that it believes will best promote democratic, electoral and governmental goals, so long as the election scheme does not improperly infringe on any voter's constitutional rights. While a state's choice of a primary election scheme is not immune from judicial review, the review should not evolve into "some amorphous general supervision of the operation of government." *United States v. Richardson*, 418 U.S. 166, 192 (1974) (Powell, J. *concurring*).

> Both the right of free political association and the State's authority to establish arrangements that assure fair and effective party participation in the election process are essential to democratic government. Our cases make it clear that the accommodation of these two vital interests does not lend itself to bright-line rules but requires careful inquiry into the extent to which the one or the other interest is inordinately impaired under the facts of the particular case.

Tashjian v. Republican Party of Connecticut, 479 U.S. 208, 234 (1986) (Scalia, J. *dissenting*) *citing Anderson v. Celebreeze*, 460 U.S. 780, 788-90 (1983) and *Storer v. Brown*, 415 U.S. 724, 730 (1974).

The issue before this Court is not whether open or closed primaries better promote the goals of effective, responsible and democratic government in a state. In fact, the comparative merits of the various forms of primary election systems has been widely debated for years by both this Court and the public in general. The issue is whether a State may continue to regulate primary elections in a manner it determines meets with that State's interests.

A state should not be denied its choice of a primary election system simply because it may not conform to the systems of other states or be able to please all political factions in the State. The fundamental concern in election law is not the interests of the candidate but the interests of the voters who choose to associate together to express their support. *Anderson v. Celebreeze*, 460 U.S. 780 (1983).

The Constitution provides that States may prescribe the time, place and manner of holding elections. U.S. Con., Art. 1, § 4; *Burdick v. Takushi*, 504 U.S. 428, 433 (1992). Common sense, as well as constitutional guidelines, compels a conclusion that the government must play an active role in the structuring of elections. *Id.* In fact, as a political matter, there must be substantial regulation of the election process if the elections are to be fair and honest and to ensure that order, and not chaos, accompanies the democratic process. *Id.*

The mere fact that a State's election system creates laws tending to limit the field of candidates from which voters may choose does not of itself compel strict scrutiny. Instead, a more flexible standard of weighing the burden imposed against the State's interest applies. *Id.* at 434.

B. The Oklahoma Semi-Closed Primary Law Does Not Violate Any Right Of Association Rights As A Voter Affiliated With Another Political Party Should Not Be Considered To Have Established An Association By Merely Desiring To Or Casting A Vote In Another Party's Primary Election.

The Respondents allege that the State statutes improperly affect the Libertarian Party's as well as the individual's right of association. *Tashjian* recognized this limited interaction as an association between the party and the voter. That association, however, was limited by *Tashjian* to independents and the political party because the voters who were registered as independents had not formed any affiliation or association with any other particular political party.

The desire to vote or even the mere act of actually voting in a political party's primary or for a particular candidate should not be viewed as forming an association. The voter has already formed a public association with another political party by registering as a member.

> Appellees' only complaint is that the party cannot leave the selection of its candidate to persons who are not members of the Party, and are unwilling to become members. It seems to me fanciful to refer to this as an interest in freedom of association between members of the Republican Party and putative independent voters. The

> Connecticut voter who, while steadfastly refusing to register as a Republican, casts a vote in the Republican primary, forms no more meaningful an "association" with the Party than does the independent or the registered Democrat who responds to questions by a Republican Party pollster. If the concept of freedom of association is extended to such casual contacts, it ceases to be of any analytic use.

Tashjian, 479 U.S. 208, 235 (Scalia, J., *dissenting*).

This tenuous "association" is exactly what Respondents believe they are entitled to have recognized and protected. The Libertarian Party Organization has not requested a change in registration rules in order for a voter to become affiliated with the Libertarian Party Organization. The non-Libertarian Party Organization Respondents testified that there was no intent to become affiliated with the Libertarian Party Organization even though they allege a desire to vote in a Libertarian Party primary. In fact, Floyd Turner, the only non-Libertarian party member who testified at the trial in this matter, admitted that he could register as a member of the Libertarian Party but stated that he would not disaffiliate from the Democratic Party, of which he was a registered member and register as a Libertarian. (R.T. 75-76). His purpose was to vote for one candidate he knew. Of course, nothing would have prevented Mr. Turner from voting for that candidate at the general election.

As noted by Justice Scalia in his dissent in *Tashjian*, this "association" is no association at all. It does nothing to promote the political party. And, the basis for desiring to vote in the Libertarian primary could just as easily be due to a sinister reason instead of a legitimate reason. The

association alleged in this case is even questionable, especially where the voter has already formed a public association with another political party by registering as a member. Under this scenario, the voter has already established with which group he wants to be associated. This should not be considered an "association" for which the State cannot reasonably regulate.

Oklahoma's semi-closed primary does not impede any voter's freedom of association. Any voter is lawfully entitled to associate with any political party and participate in that political party's primary elections by merely declaring party affiliation as part of the voter registration process. To do so or not do so is a decision made solely by the voter.

C. The Purported Basis For Desiring A Semi-Open Primary Of Providing A Voice Or Other Opportunities To Disenfranchised Or Unsatisfied Voters Is An Inadequate Legal Reason To Require The Party-Option Open Primary.

At trial and on appeal to the Court of Appeals the Libertarian Party Organization has hypothesized that the opening of its primary elections will help in providing a voice to disenfranchised or unsatisfied voters. Respondents have offered evidence as to the limited number of contested primary elections over the past few election cycles in the Democratic and Republican parties as well as the overall percentage of registered voters who have not voted in the primary elections. Respondents allege that opening its primary will provide an opportunity to vote that a registered Republican or Democrat may not otherwise have. The Court of Appeals even based its opinion on the belief that the Libertarian Party Organization's request

constituted an appropriate consideration in allowing Oklahoma's voters additional choices in primary voting.

This Court has specifically rejected that argument in *Jones*, 530 U.S. 567, 583 (2000). One purported basis for the creation of the California blanket primary law was to provide party members who lived in soft or uncontested districts an opportunity to vote in primary elections where they would not otherwise have the opportunity to vote. Those "disenfranchised" voters included minority party members and independent voters who would not have a primary in which to vote. The *Jones* decision directly addressed this finding that such voters were not disenfranchised. If the voter felt compelled to vote in one particular party's primary, that voter had the choice to join that party. Any decision to do so or not do so is the decision of that particular voter. The public affiliation of registering as a party member is the truest, simplest and most basic form of association.

The argument for providing additional choices fails in this case also. No registered voter in Oklahoma is prevented from voting in the general election. The fact that there may be only one candidate from a party thereby not requiring a primary election is not the result of any action by the State but the failure of a political party to field more than one candidate for office. This purported interest of a political party, in this case, the Libertarian Party of Oklahoma, is not sufficient legal cause to require a State to allow voters affiliated with one party to vote in another political party's primary election. The Court of Appeals' reliance on this party interest was incorrect.

II.

OKLAHOMA HAS LEGITIMATE STATE INTERESTS IN REQUIRING PARTY REGISTRATION PRIOR TO A PRIMARY ELECTION AND THE ELIMINATION OF ANY PARTY REGISTRATION REQUIREMENTS, AS EFFECTIVELY ACCOMPLISHED BY THE OPINION OF THE COURT OF APPEALS, RUNS AFOUL OF THIS COURT'S PRIOR HOLDINGS.

Election statutes requiring prior party affiliation and placing time restrictions on voter registration are a proper exercise of a state's regulatory authority. *Rosario*, 410 U.S. 752 (1993). These restrictions may take the form requirements to affirmatively affiliate with a party or disaffiliate with one party prior to voting in another party's primary elections. Election statutes requiring some form of prior affiliation with a political party in order to vote in its primary and runoff elections are generally designed to prevent four types of individuals from voting in party primaries:

> (1) Voters generally affiliated with another party but wishing to cross over to a rival party's primary to support a weak candidate who is likely to lose in the general election to the nominee of the voters' preferred party (raiders);
>
> (2) Voters generally affiliating with another party but wishing to cross over to support their preferred primary candidate in case the nominee of the voters' own party loses the general election (second choice supporters);
>
> (3) Voters generally affiliating with another party but wishing to cross over to support a candidate preferred over any potential nominee of the voters' own party (crossovers); and
>
> (4) Voters generally not affiliating with any party but wishing to support a particular party candidate (independents).

Developments In The Law – Elections, 88 Harv. L. Rev. 1111, 1164 (1975).

In its opinion, the Court of Appeals stated that the issues in this case fell directly between the issue in *Tashjian* and *Jones*. In fact, the ruling of the Court of Appeals establishes that no state regulation will withstand a challenge by a political party or its membership on restrictions to voter qualifications of primary elections. That ignores the teachings in *Tashjian*. In *Tashjian*, the court determined that the State of Connecticut's election law prevented a political party from inviting independents to vote in its primary. Although the Court determined that the regulation could not withstand judicial scrutiny in relation to independent voters, the court made a specific point to advise that a request of a political party seeking to open its primaries to other affiliated voters would not meet with the same results. *Tashjian*, 479 U.S. at 224, n. 13. Footnote 13 states:

> "Our holding today does not establish that state regulation of primary voting qualifications may never withstand challenge by a political party or its membership. A party seeking, for example, to open its primary to all voters, including members of other parties, would raise a different combination of considerations. Under such circumstances, the effect of one party's broadening of participation would threaten other parties with the disorganization effects which the statutes in

> *Storer v. Brown*, 415 U.S. 724 (1974), and *Rosario v. Rockefeller*, 410 U.S. 752 (1973), were designed to prevent. . . ."

What the footnote in *Tashjian* teaches us is that not only are the effects on the requesting political party to be considered, but that the effects on any other voters or other political parties are also to be considered in evaluating the constitutionality of a State regulation.

In *Rosario*, the court upheld a party registration time restriction which required a voter to register or change his political affiliation prior to the November general election in order to vote in the next political party primary elections. This court upheld the party registration time restriction specifically to prevent "party raiding." Those time restrictions also protect a political party from having its members being drawn to a second political party in an attempt to alter the primary elections of the first political party. "Party raiding" was defined in *Rosario* as a scheme "whereby voters in sympathy with one party designate themselves as voters of another party so as to influence or determine the results of the other party's primary." *Rosario*, 410 U.S. at 760. In *Jones*, this court again acknowledged the possibility of and the legitimate State's interest in preventing party raiding:

> [F]inally, in order to prevent 'party raiding' – a process in which dedicated party members of one party formally switched to another party to alter the outcome of that party's primary – a state may require registration a reasonable time before a primary election.

Jones, 530 U.S. at 573, citing *Rosario v. Rockefeller*, 410 U.S. 752.

In a semi-closed primary, the individual must identify himself with the party and, therefore, the party's principles. Even if the voter disaffiliates from the party after the primary elections, he joined the party for a time and associated with that party's message. However, even *Jones* recognized, which the Court of Appeals did not, the importance of actually affiliating with the political party. *Jones*, instead of requiring open primaries, supports the idea of party registration and affiliation prior to voting in a political party's primary. *Id.* 530 U.S. at 577.

Without doubt, raiding is an issue that would effect the Libertarian Party if the primary was open to all voters. While "raiding" in the truest definition may not be the issue for the Democratic or Republican parties, in this case the inverse activity of draining voters certainly is at issue. The district court termed this potential problem of voters leaving their party's primary as "poaching," a term also used by the Tenth Circuit Court of Appeals. (Pet. App. 17.) If raiding is a legitimate concern for a State to consider and regulate, the draining of party voters should also be a legitimate State interest as it too could adversely affect a political party. Those effects include changing the primary results and possibly changing the message of the party as espoused by the party's nominee, who may not have been nominated but for the poaching of voters.

A State's interest in avoiding the possibility of unrestrained factionalism in a general election provides adequate justification for a restriction on a citizen's ability to vote. *Burdick*, 504 U.S. at 439. These types of results would cause this very problem for the political parties.

The district court properly recognized the potential problems and the State's interests in preventing such

activity to the detriment of an unwitting political party and party voter. The district court's concern was based upon the evidence presented at trial. The decision of the Tenth Circuit Court of Appeals acknowledged this interest but gave it no weight. That decision deprived the State of consideration of legitimate interests akin to those in *Rosario* and *Storer.*

The Oklahoma statute serves not only to protect against activities such as raiding but serves to protect the integrity and the viability of the other political parties from actions such as poaching. In *Jones*, the court considered the effect of California's blanket primary laws and the effect of crossover voting which may occur under an open or blanket primary. In reaching this determination, the court relied on statistics which indicated that in an open primary the number of voters crossing over from their political party to another party could approach as much as twenty-five percent (25%). *Id.* 530 U.S. at 578. The amount of crossover would effect not only the results of the primary election to which the voters had been drawn but would also adversely effect the results and nominations of the party which had been abandoned in the primary vote. Those adverse effects are the exact effects which the court in *Rosario* and *Jones* indicated the State had an interest in preventing.

At the trial in this matter, Defendants submitted an expert report prepared by their expert witness, Dr. Robert Darcy, a political science professor at Oklahoma State University. (J.A. 44-78, Def. Ex. 8.) The evidence presented to the trial court revealed that in the 2000 Oklahoma election cycle, twenty-four percent (24%) of the primary and runoff elections were decided by five percentage points. (J.A. 63-64.) In fact, the evidence showed that over

four percent (4%) of the primary and runoff races were decided by less than one percent (1%) of the votes cast. (Def. Ex. 8, J.A. 63-64.) In oral testimony before the court, Dr. Darcy reiterated those figures and provided scenarios as to how the poaching of votes by the Libertarian Party could affect the election results of the other parties (R.T. 379-83, Def. Ex. 8, J.A. 65-66.)

As the 2002 election cycle had been completed prior to the trial in this matter, Dr. Darcy had also reviewed those results. Dr. Darcy testified that upon review of the results of the 2002 election cycle, he found that a number of runoff and primary races similar to the percentages found in 2000 were also decided by less than five (5) percentage points as well as a similar number decided the slimmest margins of less than one percentage point. (R.T. 381-82.) Based on his experience, research and practice as a political scientist, Dr. Darcy had no doubt that the creation of a party option semi-open primary, as requested by the Respondents would adversely affect not only the Libertarian primary elections but also would unwittingly affect an unknown number of Republican and Democratic primary and runoff elections. (R.T. 382-83.)

It is unquestioned that crossover voting would occur. Absent a declaration by the crossover voter as to his intentions, it is impossible to know the specific reason for crossover voting. Dr. Darcy also testified that the potential reasons for the crossover voting would include purposeful conduct such as "raiding" or "swamping" or even a concerted effort by the Libertarian Party to draw voters from the other parties. Other reasons for crossover voting could be legitimate reasons such as a curiosity on the part of the crossover voter or the actual desire to vote for a particular

person or through unintentional means to avoid confusion on the part of the voter.

In his report and testimony, Dr. Darcy testified that as high as ten percent (10%) of the Democratic and Republican voters in a primary and/or primary runoff election would crossover and vote in a Libertarian primary. (R.T. 374-75.) The testimony indicated that with this minimum ten percent (10%) crossover or a potential crossover rate of up to twenty-five percent (25%) as recognized in *Jones*, the opening of one party's primary would adversely effect the other parties' primaries. Dr. Darcy testified that due to the closeness of the primary and runoff primary elections, even a small percentage of crossover votes would adversely effect the primary elections of both the Libertarian Party as well as the other parties from which the affiliated voters come. (R.T. 378-83.) Dr. Darcy testified that the effect on the votes of the primary could lead to voter confusion in the general election as, whether proper or not, voters tend to rely on party affiliations of the candidate as an indication of that person's stances on the issues. This belief is consistent with the holdings of this Court.

A State has a strong interest in the stability of its political systems. *Eu v. San Francisco County Democratic Central Comm.*, 489 U.S. 214, 226 (1989). That interest does not permit a State to completely insulate the major political parties from the influence or competition of minor parties. *Anderson*, 460 U.S. at 802. However, that interest does permit a State to enact reasonable election regulations that may favor the traditional two-party system and that may "temper the destabilizing effects of party splintering and excessive factionalism." *Timmons*, supra at 367.

The United States Constitution permits a State legislature, in this case the Oklahoma Legislature, to decide that political stability is best served through a healthy two-party system. *Id. citing Rutan v. Republican Party of Ill.*, 497 U.S. 62, 107 (1990) (Scalia, J. *dissenting*).

While the interest in securing the perceived benefits of a two-party system will not justify "unreasonably exclusionary restriction," this Court has "repeatedly upheld reasonable, politically neutral regulations." *Timmons*, supra at 367-69, *citing Williams v. Rhodes*, 393 U.S. 23, 31-32 (1968) and *Burdick v. Takushi*, 504 U.S. at 437-38.

In *Timmons*, the court addressed a challenge to Minnesota's anti-collusion rule by a Minnesota political party which argued that Minnesota's rule prevented the minor party from broadening its base of support and getting its message to the general public. The State asserted that it had an interest in avoiding voter collusion and preventing party splintering and disruption of the two-party system. The court found that these interests were legitimate State interests for which a State could reasonably regulate an interest which must be considered by the court in determining the reasonableness of the State-imposed restrictions. *Timmons*, supra at 367. As the district court found, those same interests, such as the avoidance of party splintering, exist in Oklahoma and the Oklahoma statutes are designed to help protect those interests. The district court further recognized that:

> It is clear that the "important regulatory interests," *Burdick* at 434, which may outweigh associational rights in the election law context may

> encompass matters of structure, stability and party integrity . . .

(Pet. App. at 69.)

Moreover, the Oklahoma statutes are politically neutral. The statutes do not differentiate between the Democratic and Republican parties and any other political party which might be recognized in Oklahoma, including the Libertarian Party.

In spite of the evidence presented, which the trial court found to be of sufficient interest to the State, the Tenth Circuit Court of Appeals totally discounted the effect of a semi-open primary on other political parties as no concern to the State, or other political parties or the parties' members.

The Tenth Circuit Court of Appeals, *citing Timmons*, acknowledged that a "State's interest in the stability of its political system is strong." (Pet. App. at 17.) As the court also noted, the State's interest in political stability, especially in the context of ballot access, is "not only permissible but compelling." *Citing Storer v. Brown*, 415 U.S. 724, 736. (Pet. App. at 17.) The Tenth Circuit Court of Appeals then went on to ignore those directives and determined that the State's interest in these very issues was not sufficiently compelling. (Pet. App. at 22-3.)

Anytime a party nominee is nominated by people outside the party or a nominee has been selected by a smaller number of party voters as a result of a smaller turnout due to the party's members voting in other political primaries, the possibility that a nominee who is not an adherent to the party ideas is greatly enhanced. The result would encourage party factionalism, confusion of party

identification of the candidate and adversely affect the integrity of the election process. *See Storer v. Brown*, 415 U.S. 734 (1983); *Rosario v. Rockefeller*, 410 U.S. 752 (1973).

III.

THE OKLAHOMA RESTRICTIONS ARE NOT SEVERE OR OVERLY BURDENSOME AND AS SUCH THE SEMI-CLOSED ELECTION SYSTEM MUST BE DETERMINED TO BE CONSTITUTIONAL AS THE STATUTES ARE SUPPORTED BY "IMPORTANT REGULATORY INTERESTS."

While the First Amendment protects the rights of citizens to associate for political purposes, a "state may, and inevitably must, enact reasonable regulations of parties, elections and ballots to reduce election – and campaign – related disorder." *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997).

Simply because a party alleges the open primary will be of benefit to a third party does not require a State to permit that action. *Id.* 520 U.S. 361-62.

A. The Appropriate Standard Of Scrutiny Is Not A Strict Scrutiny Standard As Applied By The Court Of Appeals But A Lesser Standard.

The decision of the Court of Appeals effectively strikes the registration time restrictions that have repeatedly been upheld by the Courts basically allowing a member of the Democratic or Republican parties to effectively change his or her registration on the day of the election by simply voting in the Libertarian party primary. No other action is

necessary. There is no requirement under the Court of Appeals ruling that a Democrat or Republican voter must first resign from his party and re-affiliate or become a member of the party in order to vote in the Libertarian Party Organization primary elections. This type of primary is exactly what was stricken by the court in *Jones*.

What the court in *Jones* did recognize, is that some states conduct closed primaries but allow a voter to change his party affiliation even on the day of the election. Even though the change in registration might be easy and last minute, the voter in changing his affiliation actually becomes a member of the party in whose primary he chooses to vote. *Jones*, 530 U.S. at 577. Admittedly, a number of states do have similar primary registration rules and those rules, if a state chooses such scheme, are not unconstitutional. However, there is no constitutional requirement of same day registration and Oklahoma does not have same day registration. Oklahoma allows a voter to change his party affiliation up to June 1 of an election year, or approximately seven (7) weeks prior to the primary election. The voter cannot change his party affiliation between June 1 and August 31, which is a date after the runoff election but before the November general election. 26 O.S.A. § 4-119 (App. 9.) Oklahoma's failure to have same day registration does not trigger strict scrutiny, much less run afoul of the United States Constitution.

In *Rosario v. Rockefeller*, 410 U.S. 752, 93 S.Ct. 1245, 35 L.Ed.2d 1 (1973), the Supreme Court upheld party registration time restrictions specifically to prevent "party raiding" which was defined by the Supreme Court as a process in which dedicated members of one party switch to another political party in an attempt to alter the outcome of the second party's primary. That time restriction also

protects a political party from having its members being drawn to a second political party in an attempt to alter the primary elections of the first political party. In *Jones*, this Court cited *Rosario* with approval and failed to go so far as to overturn or even limit that decision. *Jones*, 530 U.S. at 572.

Even if a voter was required to actually affiliate with another party at the election booth on election day, such contemporaneous declaration of affiliation does not, and cannot, prevent false statements of party identification. This type of registration or affiliation does not protect any of the State's interests in preventing raiding or other electoral problems in the manner that prior registration does. *See Rosario v. Rockefeller*, 410 U.S. 752, 762, *also see Developments In The Law – Elections*, 88 Harv. L. Rev. 1111, 1173, n. 114.

Under the Oklahoma semi-closed election scheme, an affiliated voter may not vote in another party's political primary. But all he need do to vote in another party's primary is disaffiliate himself with the first party and register as a member of another political party. This may be accomplished up to seven (7) weeks prior to the primary elections, at a time after which the candidates would have made their candidacies known. 26 O.S.A. §§ 1-102, 4-119 (App. 1, 9.) This restriction is less severe and less burdensome than the restrictions challenged in *Rosario*, *Timmons*, and *Burdick*, all of which were reviewed under the lesser scrutiny standard.

B. As The Burdens Imposed By The Oklahoma Statutes Are Not Severe, The Court Of Appeals Erred In Applying A Strict Scrutiny Standard And Requiring Compelling State Interests.

The Court of Appeals erred in finding that the restrictions imposed by the Oklahoma statutes are severe. The court should have found, as the district court found, that the burdens placed on the voters by the State regulations were less than severe and that under the applicable balancing test, the regulatory interests of the State of Oklahoma were sufficient enough to justify the regulations. The Court of Appeals summarizes that in any case alleging a restriction on a party's associational rights the regulation must be narrowly tailored to advance a compelling state interest. The Court of Appeals cites to *California Democratic Party v. Jones*, 530 U.S. 567 (2000) and *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208 (1986) as a basis for applying the strict scrutiny standard. However, in *Jones*, the associational right being violated was the forced inclusion of non-party members in the voting processes of that party's primary election. In *Tashjian*, the question was the severity of a rule prohibiting non-affiliated voters from voting in a political party's primary, if that political party so chose to invite the independent voters. The severity of the burden was related directly to the fact that the political party wanted to invite non-affiliated voters, which would have no effect on any other political party.

However, the present issue is whether it is permissible and constitutionally appropriate for a state to restrict a political party from allowing a voter already affiliated with another political party from participating in another political party's primary. There are no cases finding that

such a burden on a political party or voters is a severe burden.

In this case, none of the registered Democrats or Republicans have a right to vote in another party's primary. And, the only right this Court has presumably found on behalf of a political party in seeking outside voters is the right to invite unaffiliated independent voters to vote in its primary. This Court has never held that a party has a constitutional right to invite members of another party to vote in its primaries. This Court has only concluded that it is permissible for a State to allow a political party to open its primary to other voters, but such primary election system is a matter of State choice not constitutionally mandated.

More importantly, in the cases that addressed a State's requirement that a voter be registered as a member of that political party prior to election day in order to be able to vote in that party's primary, the election laws have been reviewed under a less exacting review or what has commonly been known as a balancing test. In *Rosario v. Rockefeller*, 410 U.S. 752 (1973), this Court applied lesser scrutiny in evaluating whether a New York law that required voters to enroll in the political party by a certain cutoff date in order to vote in that party's primary violated a voter's First Amendment rights to political association. In *Rosario*, the plaintiffs challenged a New York state law which required a voter to enroll in the political party of his choice at least thirty (30) days prior to the November general election in order to be able to vote in the next subsequent party primary. The rule stated that if a voter failed to meet that deadline, the voter could not participate in a party primary until after the following general election. The petitioners filed an action alleging

that the New York statute unconstitutionally deprived them of the right to vote and abridged their freedom to associate with the political party of their choice. *Id.* at 754-56. The court first determined that the restriction was not severe and it did not constitute a ban on the voters' freedom of association due to the fact that the voters could have enrolled in the party but had chosen not to do so. The court found that the law did not absolutely disenfranchise the voters but merely imposed a time deadline on their enrollment, a deadline which they had to meet in order to participate in the next primary. In fact, *Rosario* specifically noted that under New York law "a person may, if he wishes, vote in a different party primary each year. All he need do is to enroll in the new political party between the prior primary and the October cutoff date." *Id.* at 789. For example, in June the voter could be a registered Republican and vote in the Republican primary. Before enrollment closed the following October, he could enroll in the Democratic party. Since that enrollment would be effective after the November general election and before the following February 1, he could then vote in the next Democratic primary. Before the following October, he could register to vote as a liberal, and so on. Thus, New York's scheme does not "lock" a voter into an unwanted pre-existing party affiliation from one primary to the next." *Id.*

The decision in *Rosario* is closely akin to the present action although the burden imposed on the voter under the Oklahoma system is significantly less. Under the Oklahoma primary system, a voter must generally be registered as a member of a political party, or an independent, in order to vote in that political party's primary. Oklahoma State law permits a voter to change his political affiliation as close as seven (7) weeks prior to the primary

election. As the burden on the Oklahoma voter is no more severe than that burden discussed in *Rosario*, the appropriate standard of review used by the Court of Appeals should have been an intermediate standard. Under that standard, even the Tenth Circuit Court of Appeals admitted that the burdens passed constitutional muster.

In yet another case involving a voter's ability to vote for a candidate outside his own political party's primary election, this Court applied a lesser level of scrutiny. *Burdick v. Takushi*, 504 U.S. 428 (1992). In *Burdick*, petitioner claimed that the State of Hawaii's ban on write-in voting deprived the petitioner of the ability to vote for his candidate of choice. The court first noted that not all burdens upon the right to vote are subjected to such scrutiny. *Id.* at 432. The court found that when a "state election law provision imposes only 'reasonable, nondiscriminatory restrictions' upon the First and Fourteenth Amendment rights of voters, the state's important regulatory interests are generally sufficient to justify the restrictions." *Citing Anderson v. Celebreeze*, 460 U.S. at 788. The court determined that the Hawaii law did not prevent petitioner from voting in the elections; it simply prevented him from voting for a candidate of his choice. Such restrictions which should not prevent petitioner from voting were not held to be severe. Thus, the Court declined to apply strict scrutiny to review Hawaii's election laws.

Similar to the Hawaii statutes, the Oklahoma laws do not prevent any candidate from voting in any appropriate election. They merely require that a candidate be a member of that political party or if the political party so chooses, may be an independent voter. The burden placed on the Respondents is not severe and should not be subject to the strict scrutiny standard.

In this case, the interests set out by the State of Oklahoma should be considered compelling state interests, sufficient to sustain the current Oklahoma semi-closed primary law. In any event, the correct standard to be applied is a lesser standard and absent an application of the strict scrutiny compelling state interest standard, the State regulations are clearly constitutional as the restrictions support reasonable regulatory interests of the State of Oklahoma.

CONCLUSION

The decision of the United States Court of Appeals for the Tenth Circuit should be reversed.

Respectfully submitted,

W.A. DREW EDMONDSON
Attorney General

WELLON B. POE, OBA #12440
Assistant Attorney General
State of Oklahoma
4545 N. Lincoln Blvd., Suite 260
Oklahoma City, OK 73105-3498
(405) 521-4274 Fax (405) 528-1867
Wellon_Poe@oag.state.ok.us

Attorney For Petitioners

RELEVANT STATUTES

26 O.S. § 1-102. PRIMARY ELECTIONS

A Primary Election shall be held on the last Tuesday in July of each even-numbered year, at which time each political party recognized by the laws of Oklahoma shall nominate its candidates for the offices to be filled at the next succeeding General Election, unless otherwise provided by law. No candidate's name shall be printed upon the General Election ballot unless such candidate shall have been nominated as herein provided, unless otherwise provided by law; provided further that this provision shall not exclude the right of a nonpartisan candidate to have his or her name printed upon the General Election ballots. No county, municipality or school district shall schedule an election on any date during the twenty (20) days immediately preceding the date of any such primary election.

26 O.S. § 1-103. RUNOFF PRIMARY ELECTIONS

If at any Primary Election no candidate for the nomination for office of any political party receives a majority of all votes cast for all candidates of such party for the office, no candidate shall be nominated by such party for the office, but the two candidates receiving the highest number of votes at such election shall be placed on the official ballot as candidates for such nomination at a Runoff Primary Election to be held on the fourth Tuesday of August in the same year. No county, municipality or school district shall schedule an election on any date during the twenty (20) days immediately preceding the date of any such Runoff Primary Election.

26 O.S. § 1-104. CLOSED PRIMARIES - INDEPENDENT VOTERS

A. No registered voter shall be permitted to vote in any Primary Election or Runoff Primary Election of any political party except the political party of which his registration form shows him to be a member, except as otherwise provided by this section.

B. 1. A recognized political party may permit registered voters designated as Independents pursuant to the provisions of Section 4-112 of this title to vote in a Primary Election or Runoff Primary Election of the party.

2. The state chairman of the party shall, between November 1 and 30 of every odd-numbered year, notify the Secretary of the State Election Board as to whether or not the party intends to permit registered voters designated as Independents to vote in a Primary Election or Runoff Primary Election of the party. If the state chairman notifies the Secretary of the State Election Board of the party's intention to so permit, registered voters designated as Independents shall be permitted to vote in any Primary Election or Runoff Primary Election of the party held in the following two (2) calendar years. If the state chairman of one party notifies the Secretary of the State Election Board of the party's intent to so permit, the notification period specified in this paragraph shall be extended to December 15 for the state chairman of any other party to so notify or to change prior notification. A registered voter designated as Independent shall not be permitted to vote in a Primary Election or Runoff Primary Election of more than one party.

3. Failure to so notify the Secretary of the State Election Board shall serve to prohibit registered voters

designated as Independents from voting in a Primary Election or Runoff Primary Election of the party.

4. A group of persons seeking to form a recognized political party pursuant to the provisions of Section 1-108 of this title shall, upon filing of the petitions seeking recognition of the political party with the Secretary of the State Election Board, notify the Secretary of the State Election Board as to whether or not the party intends to permit registered voters designated as Independents to vote in a Primary Election or Runoff Primary Election of the party. If the party is recognized and the group of persons seeking recognition of the party notifies the Secretary of the State Election Board of such intention, registered voters designated as Independents shall be permitted to vote in any Primary Election or Runoff Primary Election of the party held prior to January 1 of the following even-numbered year.

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26 O.S. § 1-108. FORMATION OF NEW POLITICAL PARTIES

A group of persons may form a recognized political party at any time except during the period between June 1 and November 15 of any even-numbered year if the following procedure is observed:

1. Notice of intent to form a recognized political party must be filed in writing with the Secretary of State Election board at any time except during the period between March 1 and November15 of any even-numbered year.

2. After such notice is filed, petitions seeking recognition of a political party, in a form to be prescribed by the Secretary of the State Election Board, shall be filed with

such Secretary, bearing the signatures of registered voters equal to at least five percent (5%) of the total votes cast in the General Election either for Governor or for electors for President and Vice President. Each page of such petitions must contain the names of registered voters from a single county. Petitions may be circulated a maximum of one (1) year after notice is filed, provided that petitions shall be filed with such Secretary no later than May 1 of an even-numbered year. Such petitions shall not be circulated between May 1 and November 15 of any even-numbered year.

3. Within thirty (30) days after receipt of such petitions, the State Election Board shall determine the sufficiency of such petitions. If such Board determines there are a sufficient number of valid signatures of registered voters, the party becomes recognized under the laws of the State of Oklahoma with all rights and obligations accruing thereto.

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26 O.S. § 1-109. PARTY CEASES TO BE RECOGNIZED

A. Any recognized political party whose nominee for Governor or nominees for electors for President and Vice President fail to receive at least ten percent (10%) of the total votes cast for said offices in any General Election shall cease to be a recognized party. Said party may regain recognition only by following the procedure prescribed for formation of new political parties. The State Election Board shall proclaim the fact of a party's failure to receive a sufficient number of votes and shall order that said party cease to be recognized.

B. Any recognized political party that ceases to be recognized under provisions of this section shall be designated as a political organization. Such political organization designation shall terminate four (4) years from the date that the political party ceases to be recognized or when the political organization regains recognition as a political party, whichever is earlier.

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26 O.S. § 1-110. CHANGES IN PARTY AFFILIATION

A. The Secretary of the State Election Board shall, within sixty (60) days after such proclamation by the State Election Board, change to Independent the party affiliation in the Oklahoma Election Management System of each registered voter of a political party which ceases to be a recognized political party.

B. The Secretary of the State Election Board shall change to Independent the party affiliation in the Oklahoma Election Management System of each registered voter of a political organization which ceases to be a political organization.

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26 O.S. § 4-110.1. TIME FOR SUBMISSION OF VOTER REGISTRATION APPLICATIONS – NOTICE OF DISPOSITION

A. Voter registration applications may be submitted at any time. However, completed applications received by the State Election Board, any county election board, any agency designated to accept voter registration applications or any motor license agent as part of a driver's license or identification card application twenty-four (24) days prior

to an election; any mail application postmarked twenty-four (24) days or less prior to an election or any mail application received without a postmark nineteen (19) days or less prior to an election shall not be approved for that election if the applicant's residence is located within the geographical boundaries of the entity for which the election is being conducted.

B. No more than seven (7) days after any election, each county election board secretary for the county of the applicant's residence shall mail a notice of disposition as required in Section 8 of this act to all persons whose voter registration applications were received twenty-four (24) days or less prior to the election.

C. Registration for voting purposes occurs when a completed voter registration application is approved by the county election board secretary for the county or [sic] the applicant's residence and on the date that the information is entered into the Oklahoma Election Management System for the county of the applicant's residence.

D. Registration for candidate filing or party affiliation purposes occurs at the earliest time the completed voter registration application is received at the State Election Board, any county election board, any agency designated to accept voter registration applications or any Motor License Agent as part of a driver's license or identification card application provided that the application subsequently is approved by the secretary of the county election board for the county of the applicant's residence; or, in the case of mail applications, registration for candidate filing or party affiliation purposes shall occur at the time when the completed voter registration application is postmarked provided that the application subsequently is approved by

the secretary of the county election board for the county of the applicant's residence; or in the case of a mail application received without a postmark, registration for candidate filing or party affiliation purposes shall occur at the earliest time when the completed application is received by the State Election Board or any county election board provided that the application is subsequently approved by the secretary of the county election board for the county of the applicant's residence.

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26 O.S. § 4-112. REGISTRATION APPLICATIONS

A. The Secretary of the State Election Board shall devise and distribute a registration application to be used for registering voters. Such registration application shall contain the following information: voter's full name and date of birth, county and place of residence, and mailing address pursuant to the provisions of subsection B of this section; the names of political parties recognized by the laws of the State of Oklahoma with which the voter may be affiliated; the last four digits of the voter's social security number; an oath of the voter's eligibility to become a registered voter; and such other information as may be deemed necessary by the Secretary to identify such voter and to ascertain his or her eligibility. A voter registration application shall be signed by the applicant in writing. The applicant shall personally subscribe his or her name to or make his or her mark on the application, and no agent, representative or employee of the applicant may sign or mark on the applicant's behalf. The signature or mark must be the original, handwritten signature, autograph or mark of the applicant. No facsimile, reproduction, typewritten or other substitute signature, autograph or mark

will be valid. Notwithstanding any law to the contrary, the Secretary of the State Election Board shall prescribe procedures to authorize any person incapable of personally making a mark to complete a voter registration application with assistance of an official of any voter registration agency or motor license agency specified in Sections 4-109.2 and 4-109.3 of this title. Persons who do not indicate a recognized political party or political organization on their registration application shall be designated as Independents. Any person may apply in writing to the Secretary of the State Election Board for permission to print, copy or otherwise prepare and distribute the registration applications designed by the Secretary of the State Election Board. The Secretary may revoke any such permission at any time. All registration applications shall be distributed to the public at no charge. The Secretary also shall prescribe procedures to accept and use federal registration applications as required by the National Voter Registration Act of 1993.

B. Applicants for voter registration or for change of voter registration in any way shall provide a residence address and, if different from the residence address, a mailing address. A residence address shall include the street address of the residence, including a full house number, street name or number, apartment or suite number, if applicable, and zip code. If a street address is not available for the residence, applicants shall provide such information as the State Election Board deems necessary for voter registration purposes. A post office box may not be given as a residence address. A mailing address, which shall include the city and zip code, may be the actual emergency notification or 911 address on file in the local community, a

rural route and box number, a post office box number or a street address.

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26 O.S. § 4-119. CHANGE OF POLITICAL AFFILIATION

Any registered voter may make application under oath to change political affiliation by executing a form prescribed by the Secretary of the State Election Board at any time. The county election board secretary in the applicant's county of residence shall process and approve any such application for political affiliation change upon receipt, except as provided in Section 4-110.1 of Title 26 of the Oklahoma Statutes and except during the period from June 1 through August 31, inclusive, in any even-numbered year. The secretary shall process and approve such applications for change of political affiliation received or postmarked from June 1 through August 31 in any even-numbered year after August 31.
